Hudson Waterways Corporation and Seatrains Lines Inc.[1] ***and*** **Transportation Employees Association, affiliated with District 2, MEBA, AFL–CIO, Petitioner.** Case 2–RC–15542

September 27, 1971

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Nathaniel H. Janes. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director for Region 2 transferred this case to the National Labor Relations Board for decision. Briefs have been filed by the Employer and the Petitioner.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs filed by the parties, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

3. The Employer is engaged in the worldwide maritime portage of cargo and owns and operates for that purpose a fleet of ships. It is a multicorporate organization composed of a parent company, Hudson Waterways Corporation, a New York corporation with principal offices in New York, New York, and two wholly owned subsidiaries— Seatrains Lines, Inc., a Delaware corporation with principal offices in Weehawken, New Jersey, and Seatrain of California, a California corporation with principal offices in Oakland, California. The latter was only recently established.

This proceeding involves those employees of the Employer who are called ships paymasters, hereinafter paymasters, and whose principal function is to facilitate port clearance of the Employer's vessels and to pay the crewmembers of those vessels. The Employer has three paymasters who work out of the New York City offices, two who work out of the Weehawken, New Jersey, offices, and two who work out of the Oakland, California, offices. Paymasters at all three offices are under the ultimate supervision of Chief Paymaster George Reilly, whose office is in New York City, and who as the parties agreed, is a supervisor within the meaning of the Act. Although other employees of the Employer are currently covered by collective-bargaining contracts, the paymasters have no history of collective bargaining.

The Petitioner seeks to represent a unit confined to the paymasters who work out of the Employer's New York, New York, and Weehawken, New Jersey, facilities. The Employer opposes the petition on the grounds that the paymasters are either confidential, managerial, or supervisory employees who should not therefore be granted bargaining rights under the Act. The Employer further contends that, in any event, the requested unit is inappropriate because it would exclude the paymasters at the Oakland, California, facility.

We deal first with the Employer's primary contention that the paymasters are either confidential, managerial, or supervisory employees. This contention is grounded on the character of the responsibilities delegated to the paymasters, as below described, in fulfilling the wage obligations of the Employer in accord with the provisions of its bargaining contracts with one or more of the maritime unions representing its seagoing crews.

The particular tasks which paymasters regularly perform in paying off a vessel's crew begin when, some days before a ship is due to arrive in port, the master of the vessel forwards the payroll figures by telegram to the appropriate port office of the Employer. The chief paymaster then assigns the payoff responsibilities with respect to the arriving vessel to a particular paymaster. Following established procedures, the paymaster studies the master's payroll and other office records about the vessel's current voyage and past voyages with a view to determining the existence of actual or potential areas of dispute about such matters as the hours actually worked by individual crewmembers and the computations of the amounts of overtime pay due. If, as is sometimes the case, the paymaster's study reveals actual or potential pay disputes, the paymaster then confers with the chief paymaster to determine how the Employer wishes the dispute handled at the point of payoff. This determination is made, in part, by reference to the relevant bargaining agreements which

[1] The name of the Employer appears as amended at the hearing

the Employer has with one or more of the maritime unions, including MEBA, which represents its vessels' crews.[2] Then, just before the vessel is due in port, the paymaster compiles the payroll sheets, pulls from the office files copies of the relevant bargaining contracts and places them in his portfolio, makes arrangements for the money to be delivered to the vessel's berth on the date set for the payoff, and notifies the individuals whose attendance is necessary at the payoff of the date and time the vessel is due. Among those customarily notified are the agents of unions representing the vessel's crew, the shipping commissioner, and the local port agent.

The "on-board" portion of the paymaster's tasks begins when he audits the master's payroll list upon arriving at the vessel. This audit procedure requires, *inter alia,* a review of the supporting documents and a check for arithmetic errors. This review discloses the existence, nature, and cause of any pay claims in dispute arising out of the voyage about such matters as overtime, late sailings, or inadequate or substandard working conditions. It will also direct the paymaster's attention to the applicable bargaining contract provisions. If, on the basis of the information he has gathered at the vessel, the prior instructions he may have received at the preparatory stage, and/or his reference to the relevant provisions of the bargaining contract, the paymaster believes the claim has merit, he so advises the master and tries to obtain the master's agreement to payment of the claim. If the master refuses agreement, the paymaster withholds approval and payment of the claim pending either (a) further discussion of the matter between the master, the employee's supervisor, the employee, and his union representative, or (b) reference of the claim to the chief paymaster for instructions.

After the disputed items have been settled or set aside, the paymaster prepares the payroll, divides the cash that has been sent to the ship into pay envelopes, and distributes the moneys to the ship's crew.[3] The paymaster then audits and settles the master's accounts, including such items as the moneys received and the disbursements made while the vessel is away from port, and the "slop chest" purchases made. At the request of the master, the paymaster then performs any other duties necessary to clear the vessel for further voyage. In order to facilitate the vessel's clearance from port, the paymaster may, *inter alia,* have to place an order with the port agent or the union hall for the replacements needed for crewmembers who have left the ship; arrange for the master to be transported to the port agent's office, or to the office of the shipping commissioner; type the voyage articles; and arrange for reproduction of the crew list. Thereafter, the paymaster returns to the Employer's offices, makes a final audit of the payroll, prepares a paymaster's "Voyage Report" and an "Overtime Analysis" report.[4]

In contending that paymasters are either confidential, supervisory, or managerial employees within the meaning of relevant Board criteria,[5] the Employer asserts that the paymasters' function in settling disputed pay claims is, in essence, a "grievance-adjustment" function; that, in performing this function paymasters obtain or have access to information of a confidential character about the Employer's labor relations policies; and that, moreover, if the paymasters become represented by a union, the Employer would be exposed to the risk that paymasters would be influenced by their prounion sympathies in "negotiating" settlements of pay disputes with all maritime unions in general, and by loyalty to their own union, when dealing with it in particular, thus confronting the Employer with a "conflict of inter-

[2] All crewmembers on ships operated by Hudson Waterways Corporation and Seatrains Lines, Inc., are represented by one or another of the various maritime unions Seatrain of California has no labor agreements with any union

[3] The total amount of moneys paid out depends on the length of the voyage The record shows that although a payoff may involve a sum as small as $10,000, or one slightly in excess of $100,000, the average payroll is usually between $30,000 and $40,000 Moreover, the record discloses that, on the average, 20 payoffs a month take place for the Employer's ships.

[4] In the "Voyage Report," the paymaster gives some description of the disputes which arose at the payoff and of their resolution He also may comment on such matters as the condition of the ship, the conduct of the payoff, the reasons for any delay in the arrival or departure of the vessel, and the captain's performance of his administrative and maritime duties It is clear from a review of all copies of the reports adduced in evidence that the object of these reports is to provide an office record of the conduct of, and the circumstances connected with, the actual payoff for future reference There is no uniformity in the paymaster's various comments about extraneous matters such as the condition of the ship and the master's performance of his administrative or maritime duties, except where individual paymasters have established a personal pattern of reporting Moreover, there is no evidence that the Employer either relies on these reports as the basis for corrective action, or takes such action without independent investigation

[5] As the Employer recognizes, the standard which the Board first enunciated in *B F Goodrich Company,* 115 NLRB 722, 724, and has since consistently followed, is that where a party seeks to exclude employees on the grounds of "confidential" status, it must establish that such employees "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations" As the *Goodrich* case makes clear, the quoted criteria are to be assessed in the conjunctive A similar standard applies to employees sought to be excluded from the ambit of the Act on the grounds that they are "managerial" employees However, while "managerial" employees may properly be excluded from units composed of other employees on the basis of a "lack of community of interest," the Board recently held that "managerial" employees are entitled to the protection and benefits of the Act See *North Arkansas Electric Cooperative, Inc.,* 185 NLRB No. 83 Subsequently, in circumstances where the entire unit sought was composed of "managerial" employees, the Board found the unit appropriate and directed an election therein *Bell Aerospace Company, Division of Textron, Inc.,* 190 NLRB No 66 The indicia of "Supervisory" status are, of course, those set out in Section 2(11) of the Act.

est." We find that the objective facts depicted by the record do not support the Employer's position.[6]

In the first place, it seems plain from the record as a whole that the situations in which paymasters pay employee wage claims which differ in amount from those recorded on the payroll lists are confined to these which are susceptible to resolution in a limited number of ways. Initially, the paymaster's authority to resolve pay claims is limited by the provisions of the applicable collective-bargaining agreement, and by his knowledge of the Employer's interpretation of these provisions. Furthermore, with respect to certain specific claims, the paymaster's discretion is circumscribed both by the previous instructions given him by the chief paymaster and by the past records of like disputes settled with employer approval. We note, in this regard, that the paymasters contact the chief paymaster for further instructions if the claim is atypical in nature, or cannot be settled to the union's satisfaction, and that all paymasters carry the home and office telephone numbers of both the chief paymaster and the vice president in charge of labor relations for this purpose. Indeed, no showing was made that paymasters have ever paid wage claims which involve some judgment independent of the decisions or rules already formulated by the Employer and made binding on all concerned. We are thus unable to conclude that the paymasters' alleged "authority" to pass upon the merits of an employee's wage claim goes beyond minor disputes, or that, as a practical matter, such "authority" involves more than the performance of a ministerial act within well-defined and predetermined limits. This kind of authority falls far short of that envisaged either by the Act's definition of the "authority. . .to adjust grievances," or by the Board's definition of one who "formulates, determines or effectuates labor relations policy," or who acts in a confidential capacity to others who formulate, determine, or effectuate labor relations policy.[7]

Furthermore, and in view of our finding that the latitude afforded paymasters to "settle" or to pay disputed wage claims is circumscribed, we believe that the Employer overstates the fear which it expresses that, in the event that the paymasters obtain representation rights, they might be tempted to favor employee claims. It asserts that paymasters are particularly capable of undermining the Employer's position and prejudicing its best interests where a dispute involves an employee represented by the same union as the paymaster.[8] The Board was recently faced with a similar expression of employer concern in *Bell Aerospace Company, a Division of Textron, Inc.*[9] There, the Board held that it would not deny employees the right of representation simply on the basis of speculative apprehensions. We here note, moreover, that the Employer possesses, in the "Paymaster's Voyage Report," the management tool with which to evaluate the character of the paymaster's performance of his duties, and that substantial deviations from established policy with regard to the payment of claims would be readily apparent from that document. The Employer always possesses, of course, the means to take corrective action. As stated in *Bell Aerospace Company, supra,*

> The Employer would still retain the power to discipline or discharge employees for improper performance of duty, subject only to such limitations as he might agree to during negotiations. Experience under the Act indicates no reason to believe that employers generally lightly bargain away their disciplinary control over employees. . . .

On all the foregoing facts, we conclude that the paymasters are employees within the meaning of the Act who are entitled to be represented by the Petitioner, or any other union, if they so desire, and that a question affecting commerce therefore exists with respect to the representation of employees within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. There remains for consideration the Employer's objection to the Petitioner's proposed limitation of the unit to the paymasters employed at the two east coast facilities of the Employer and the exclusion, accordingly, of paymasters who are employed at the Oakland, California, facility.

The Employer claims, contrary to the Petitioner,

[6] In reaching this conclusion, we rely on the record evidence of the paymasters' authority as it has been, and is, exercised by them, and we have given little weight to the conflicting, self-serving, and generalized testimony of both Petitioner's and the Employer's witnesses with respect to the scope of that authority

[7] We note, in this regard, the Employer's claim, as elicited in generalized testimony given by its witnesses, that management officials seek the opinions of the paymasters on certain questions for the developing of positions with respect to collective-bargaining negotiations, or the formulation of future labor relations policies. This type of consultation, however, does not impute a confidential or managerial status to employees absent evidence, not present here, that the employees thus consulted are actually privy to management's exchanging of views about labor policy in the performance of their regular duties Indeed, it appears here that the information the paymasters acquire by virtue of these consultations pertains solely to wage policy, and this information is, or will be, ultimately made available to the union representatives. This type of information will not confer a confidential status on an employee. Cf. *Weyerhaeuser Company,* 173 NLRB 1170, 1173; *Chrysler Corporation,* 173 NLRB 1046, 1047–48.

[8] The Employer could support this contention in the record only by testimony bordering on conjecture. Its witnesses could not relate any instance wherein any paymaster had failed to represent the best interests of the Employer in recent payoffs, although it must be obvious to the Employer that the Petitioner has the support of at least some of its paymasters. Indeed, the import of the Employer's testimony is that the paymasters have continued to perform their duties diligently and admirably. We will not, therefore, presume that a change in this state of affairs will follow, *ipso facto,* from our direction of an election herein.

[9] Fn. 5, *supra.*

that *only* an overall unit extending, in scope, to all three of the facilities can be appropriate in the circumstances of this case. In support of its unit position, the Employer relies on the undisputed facts that all its paymasters have the same functions and responsibilities, work under substantially the same conditions, share the same benefits and are under the same overall supervision of the chief paymaster. Although these facts plainly support the appropriateness of an overall unit, we do not find that they negate the appropriateness of the less extensive unit sought by the Petitioner. We note in this regard that the proposed exclusion of the Oakland, California, facility is supported by its geographic separation of over 3,000 miles from the other facilities; that there is no regular interchange between the east coast paymasters and those located on the west coast; that there is no history of collective bargaining with respect to the unit sought by the Petitioner; and that no union is presently seeking to represent the Employer's paymasters on an overall unit basis.[10]

We find on the basis of the foregoing that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All ships paymasters employed in the New York, New York, office of Hudson Waterways Corporation and in the Weehawken, New Jersey, office of Seatrains Lines, Inc., excluding all ships paymasters employed in the Oakland, California, office of Seatrain Lines of California; production and maintenance employees; plant and office clerical employees; guards, the chief paymaster and all other supervisors as defined in the Act.

(Direction of Election[11] omitted from publication.)

[10] Cf. *Sea-Land Service, Inc*, 137 NLRB 546 In *Adams Drug Co*, 164 NLRB 594, 595, the Board stated that "in the absence of any history of collective bargaining, where no labor organization is seeking a broader appropriate unit, the Board has long held that the petitioning labor organization needs only to establish that the group of employees it has attempted to organize and seeks to represent is 'an' appropriate unit" (Citation omitted)

[11] In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them *Excelsior Underwear Inc*, 156 NLRB 1236, *N L R B* v *Wyman-Gordon Co*, 394 U S 759 Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 2 within 7 days of the date of this Decision and Direction of Election The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed